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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON
5

6 UNITED STATES OF AMERICA,

No. 2:14-CR-021-RMP-23

7 Plaintiff,

ORDER GRANTING
DEFENDANT'S MOTION FOR
RECONSIDERATION

8 vs.

Motion Granted

9 BRETT A. LUTON,

(ECF No. 594; 595)

10 Defendant.

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12 At the April 15, 2014, hearing on Defendant's Motion for reconsideration of
13 his detention, ECF No. 594, Defendant was in custody and present with counsel
14 counsel Peter S. Schweda. Assistant U.S. Attorney Jared C. Kimball represented
15 the United States.

16 The Court has reviewed Defendant's Motion, the Supplemental Pretrial
17 Services Report of April 11, 2014, as well as the initial Pretrial Services Report of
18 March 27, 2014. Counsel for both parties presented argument, and Pretrial
19 Services Officer Al Barrett addressed the court.

20 Defendant has one prior felony conviction, over twenty years ago. The
21 parties dispute whether a weapon was involved in that offense, though RCW
22 9A.56.200 makes it clear that the offense may be committed without a weapon.
23 Defendant also has a domestic violence offense from approximately fourteen years
24 ago, and a driving offense that is approximately ten years old. The Defendant has
25 no prior convictions for substance abuse violations.

26 Defendant is diagnosed with a chronic and progressive medical condition for
27 which he is prescribed daily injections, and which counsel asserts significantly
28 compromises his immune system and vigor.

The Defendant has also provided an address, which has been evaluated by Pretrial Services and appears to include no weapons, illegal substances or persons with criminal records or gang affiliations. Defendant proposes to reside there with the renter of the home, with whom he has a domestic relationship, and their two children. This domestic partner was present in court.

The United States argued that there is strong evidence that Defendant was active in three overlapping conspiracies to acquire and distribute three distinct prohibited drugs.

This Court has taken into account the evidence, testimony and information produced at this hearing concerning the nature and circumstances of the offense charged, the weight of the evidence against the Defendant, his history and characteristics, including character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to alcohol and drug abuse, criminal history, record concerning appearance at court proceedings, and the nature and seriousness of the danger to the community posed by Defendant's release.

The Court, having considered the proffers of Defendant and Plaintiff, and 18 USC § 3142, finds that conditions of released can be fashioned to reasonably assure the Defendant's future appearance, as well as the safety of the community.

Accordingly Defendant's Motion, ECF No. 594, is GRANTED.
Defendant's Motion to Expedite, ECF No. 595, is GRANTED.

IT IS ORDERED that the release of the Defendant is subject to the following:

STANDARD CONDITIONS OF RELEASE

- (1) Defendant shall not commit any offense in violation of federal, state or local law. Defendant shall advise the supervising Pretrial Services Officer and defense counsel within one business day of any charge, arrest, or contact with law enforcement. Defendant shall not work for the United States

1 government or any federal or state law enforcement agency, unless
2 Defendant first notifies the supervising Pretrial Services Officer in the
captioned matter.

- 3 (2) Defendant shall immediately advise the court, defense counsel and the U.S.
4 Attorney in writing before any change in address and telephone number.
- 5 (3) Defendant shall appear at all proceedings as required and shall surrender for
6 service of any sentence imposed as directed.
- 7 (4) Defendant shall sign and complete A.O. Form 199C before being released
8 and shall reside at the address furnished.
- 9 (5) Defendant shall not possess a firearm, destructive device or other dangerous
10 weapon.
- 11 (6) Defendant shall report to the United States Probation Office before or
12 immediately after release and shall report as often as they direct, at such
13 times and in such manner as they direct.
- 14 (7) Defendant shall contact defense counsel at least once a week.
- 15 (8) Defendant is further advised, pursuant to 18 U.S.C. § 922(n), it is unlawful
16 for any person who is under indictment for a crime punishable by
17 imprisonment for a term exceeding one year, to possess, ship or transport in
18 interstate or foreign commerce any firearm or ammunition or receive any
19 firearm or ammunition which has been shipped or transported in interstate or
20 foreign commerce.
- 21 (9) Defendant shall refrain from the use or unlawful possession of a narcotic
22 drug or other controlled substances defined in 21 U.S.C. § 802, unless
23 prescribed by a licensed medical practitioner.
- 24 (10) Surrender any passport to Pretrial Services and shall not apply for a new
25 passport.

26 **BOND**

- 27 (11) Defendant shall execute a \$5,000.00 percentage bond, with \$500.00 paid in
28 cash

1 ADDITIONAL CONDITIONS OF RELEASE

2 Upon finding that release by one of the above methods will not by itself
3 reasonably assure the appearance of the Defendant and the safety of other persons
4 and the community:

5 **IT IS FURTHER ORDERED** that the release of the Defendant is subject
6 to the following additional conditions:

- 7 (12) Defendant shall remain in the Eastern District of Washington while the case
8 is pending. On a showing of necessity, and with prior notice by the defense
9 to the assigned Assistant U.S. Attorney, the Defendant may obtain prior
10 written permission to temporarily leave this area from the United States
Probation Office.
- 11 (13) Avoid all contact, direct or indirect, with any persons who are or who
12 Defendant would reasonably know may become a victim or potential
13 witness in the subject investigation or prosecution.
- 14 (14) Avoid all contact, direct or indirect, with known felons or Co-Defendant(s)
15 or gang affiliates or members.
- 16 (15) Refrain from any use of alcohol.
- 17 (16) There shall be no firearms in the home where Defendant resides.
- 18 (17) **Prohibited Substance Testing: If random urinalysis testing is not done**
19 **through a treatment program, random urinalysis testing may be**
20 **conducted at the discretion of Pretrial Services, but shall not exceed six**
21 **(6) times per month.** Defendant shall submit to any method of testing
22 required by the Pretrial Service Office for determining whether the
23 Defendant is using a prohibited substance. Such methods may be used with
24 random frequency and include urine testing, the wearing of a sweat patch, a
25 remote alcohol testing system, and/or any form of prohibited substance
screening or testing. Defendant shall refrain from obstructing or attempting
26 to obstruct or tamper, in any fashion, with the efficiency and accuracy of
prohibited substance testing. Full mutual releases shall be executed to
27 permit communication between the court, Pretrial Services, and any testing
agency.

1 **HOME CONFINEMENT/ELECTRONIC/GPS MONITORING**

- 2 (18) Defendant shall participate in one or more of the following home
3 confinement program(s):

4 **Electronic Monitoring:** The Defendant shall participate in a program of
5 electronically monitored home confinement. The Defendant shall wear, at
6 all times, an electronic monitoring device under the supervision of U.S.
7 Probation. In the event the Defendant does not respond to electronic
8 monitoring or cannot be found, the U.S. Probation Office shall forthwith
9 notify the United States Marshals' Service, who shall immediately find,
10 arrest and detain the Defendant. The Defendant shall pay all or part of the
11 cost of the program based upon ability to pay as determined by the U.S.
12 Probation Office.

13 OR

14 **GPS Monitoring:** The Defendant shall participate in a program of GPS
15 confinement. The Defendant shall wear, at all times, a GPS device under the
16 supervision of U.S. Probation. In the event the Defendant does not respond
17 to GPS monitoring or cannot be found, the U.S. Probation Office shall
18 forthwith notify the United States Marshals' Service, who shall immediately
19 find, arrest and detain the Defendant. The Defendant shall pay all or part of
20 the cost of the program based upon ability to pay as determined by the U.S.
21 Probation Office.

22 **Home detention:** Defendant shall be restricted to his/her residence at all
23 times except for: attorney visits; court appearances; case-related matters;
24 court-ordered obligations; or other activities as pre-approved by the Pretrial
25 Services Office or supervising officer, including but not limited to religious
26 services, medical necessities, substance abuse testing or treatment, or mental
27 health treatment:

- 28 (19) Defendant shall, prior to his release, provide evidence to the Court the arrest
29 warrant in Great Falls, Montana, has been resolved and is no longer in
effect.

30 **IT IS FURTHER ORDERED** the United States' oral request to stay
31 Defendant's release pending the United States' prompt determination of whether
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1 review will be sought is **GRANTED**. The United States shall proceed according
2 to this District's policy, and advise this court and defense counsel court if review
3 will be sought, and/or the time and place of the review hearing.

4 DATED April 15, 2014.



A handwritten signature in black ink, appearing to read "J.T.R." or "John T. Rodgers".

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6 JOHN T. RODGERS
7 UNITED STATES MAGISTRATE JUDGE
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